

**TOWN OF WEST HARTFORD – PUBLIC HEARING
ORDINANCE LIMITING DEVELOPMENT OF PROPERTY ACROSS ZONING
DISTRICT BOUNDARIES
LEGISLATIVE CHAMBERS
JANUARY 14, 2014 6:50 P.M.**

Public Hearing called to order at 7:54 p.m.

President Slifka: Okay now, I call the 6:50 Public Hearing to order. This is Ordinance limiting the development of property which crosses zoning district boundaries. Roll call, please, Ms. Labrot?

Present were Councilors Chris Barnes, Harry Captain, Judy Casperson, Leon Davidoff, Burke Doar, Denise Hall, Clare Kindall and Scott Slifka. Absent: Shari Cantor. Mr. Gordon sat in for Ms. Cantor.

President Slifka: Thank you. Mr. Alair, you're on again.

Mr. Alair: All right and if I could take the lead of Mr. Van Winkle who fell on his sword and I think entirely unnecessarily by the way but fell on his sword earlier about the Farmington Avenue East and the RM-0 zone. The referrals of these three Ordinances to DRAC and to CRCOG were because I wasn't paying attention and suggested that they be referred and they, in fact, did not need to go so that, that was my error.

President Slifka: Anybody else want to confess anything while we're at it? [Laughter]

Mr. Alair: I was on the grassy knoll too but that's another issue. This third Ordinance is an Ordinance limiting the development of property, which crosses zoning district boundary lines. This Ordinance is related to the first Ordinance you heard tonight, the one that was brought about by the Bishop Road application. You heard in that Hearing Attorney Pearson explain that, in essence, this is a two-step process. First, the lots were combined and now there is an application pending on the combined lot to develop it according to the zoning classification that's in place and there are still two zoning classifications in place even though there's one lot. The front half is RM-0, the back half is RM-1, and the dividing line is where the lot line used to be. The Town Planner is required to approve that lot consolidation. The resulting lot meets all of the requirements of the zone, both zones, and, therefore, he had no choice but to approve it. What this Ordinance does is put back into place or keep in place the zoning classifications on those two parcels and treats them as two separate parcels for zoning purposes. Until the applicant comes back to the Council as the zoning authority and says we've consolidated these two lots, even though there's a dividing line down the middle, we want to develop them as a single lot and we need you to make, make that full parcel one zone or the other, so that we can develop it as a single parcel. Until that decision is made by the Council, they're treated as two completely separate lots; side yards, rear yard, height limitation, all of the zone, zoning criteria would remain in effect treating them as two separate parcels. And the reason for that and it's very unusual and it would be very unusual if this Ordinance would be applied but if we go back to that Farmington Avenue East Task Force and what it was trying to accomplish. It was trying to

say RM-0 zone is appropriate on this individual lot for the benefit of this parcel and it's really a kind of a zone that's uniquely applied to small areas. It's a transitional zone. It really only goes one lot at a time and I believe that that whole idea is why nobody ever looked at the next lot over. Nobody ever thought that the zone would be applied in conjunction with a lot in a neighboring parcel. That was just not what was contemplated. And that's why I believe that despite the fact that the Ordinance is silent on it and we have to deal with it as it's written, that's why that issue was never addressed. It was always intended that way. So the idea here is the Council makes that legislative decision. The Council made the legislative decision to adopt the RM-0 zone to lend it on an individual parcel and to create a boundary line between that zone and the zone next door. And until the Council lifts that boundary line by an application, we should assume that the Council intended that line to be there for a reason and we should regulate development accordingly. And an applicant can always come in and ask for a zone change to make the zone consistent for the whole parcel but until they do, we're going to still treat it as two. That, that's what the Ordinance does. What it does not do and the reason I mention this very specifically is because you have an application on your Agenda tonight where this could be an issue. It does *not* apply to the RP zone. There are, we have a zone in town, the RP zone, which allows a residential, if you will, buffer parcel to be created that allows the parcel to be used for commercial parking but nothing more as a buffer between that property and a residential district. So, in essence, parking is the only thing that's allowed in that zone. We did not want to say, well we've created the zone for precisely that purpose and then say, well, you can't really use it because you've got a split-zoned parcel and we're going to make it be treated as a separate zone. That, so, so we specifically carved out the RP zone and we also specifically made the Ordinance applicable only to cases where the applicant buys two pieces of property and then combines them. If, if the parcel is already split-zoned today, as of the date this Ordinance is adopted, and that happens sometimes. We have a few parcels in town where there's already a zoning line running through it, that is not affected by this change. It's only where somebody actively and affirmatively removes that property line and combines it and creates the situation that the Ordinance would come into play.

President Slifka: Mr. Alair, in layman's terms, does that mean that if we pass this that if you have two properties with a different zone and you consolidate them, you cannot essentially get like a default zone change simply by consolidating the next property over.

Mr. Alair: Yes.

President Slifka: Unless you come back and ask for that change.

Mr. Alair: Exactly. That's exactly the point.

President Slifka: Okay.

Councilor Hall: So, for example, if this Ordinance passed and then at some future date 2 and 6 Bishop, how would that affect their application? Maybe that'd give us a real-world...

Mr. Alair: Sure. So 2 and 6 Bishop, well, 2 and 6 Bishop has already been approved so that's, let's assume that 2 and 6 Bishop happens after this, those two parcels, even though for Title

purposes, for lot purposes, they have been consolidated as a single parcel of land and they could be sold and bought and sold and looked upon for Title purposes as the same parcel of land. For zoning purposes, they would be treated as essentially as two parcels and in the most obvious case, you have to have a minimum mandatory side yard from the house next to you. That would apply between those two zoning parcels, even though they're a single parcel for all other purposes. So, in essence, this development, proposed development, could not happen; they'd have to be built out as two lots unless the applicant came back to you, said gee, we'd really like you as the Council to make the entire parcel either RM-0 or RM-1 and allow us to develop it as a unified parcel.

President Slifka: Anybody else? Mr. Captain.

Councilor Captain: You just confused me, Pat. So in regard to the pending application, this Ordinance would not apply to the pending application, correct?

Mr. Alair: Correct. And that's because the lot consolidation has already happened. It's already been approved. That's step 1. And step 1 is already done.

President Slifka: Mr. Davidoff.

Councilor Davidoff: I just have a question about some of the wording in the fourth 'whereas' clause. It says until a legislative determination is made to change those boundaries. So would that have to be a proactive Council Ordinance?

Mr. Alair: Correct.

Councilor Davidoff: And so it would not be initiated by a potential applicant?

Mr. Alair: It could be initiated either way. The most common way under this scenario would be for the applicant to come in and ask for that zone change, at which time you would make a legislative decision. Your action on a zone change application is a legislative decision.

President Slifka: Mr. Doar.

Councilor Doar: Thank you, Mr. Mayor. I have to confess, Pat, that these Ordinances are taxing my analytical skills and so bear with me but if I'm following everything that we've heard tonight in these two different Public Hearings, there seems to me to be a position on the Bishop's Road property, lots 2 and 6, that if this Council should not approve the proposed Ordinance change from the 6:45 Hearing, the current property owner at 2 Bishop Road might give them some more flexibility to do something with respect to 6 Bishop Road that would be more palatable to the community. If I followed Ms. Pearson's, the attorney, Ms. Pearson's logic, don't approve this proposed Ordinance at 6:45 at least in the case of 2 and 6 because you're limit-, you're bootstrapping the current developer. Then you come to us at 8:00 and talk to us about passing an Ordinance that seems to have some relevance to two, two properties that have different zoning designations. My question to you is does this, if we pass this Ordinance or does this Ordinance

have any relevance to Attorney Pearson's argument that she made at the 6:45 Hearing, if you're following my question?

Mr. Alair: I am and the answer is no it has no relevance but only because that application's already been approved. If that application came to you, if that application came to the Town Planner, the lot consolidation application, after the effective date of this Ordinance, it would create a situation, it would have an application. But it doesn't because it's already been approved. I think you got it. [Laughter]

President Slifka: Okay. Anybody else? Okay. The signup sheet, Mr. Alair?

Mr. Alair: Also blank.

President Slifka: Okay. Anybody who did not sign up who wished to speak to the subject matter of this Hearing? Oh. Okay, our apologies to Daniel Barrows...who does not appear to be here. Okay. I hope he's watching. All right. Once again, is there anybody who did not sign up who wished to speak to the subject matter of this Hearing? Okay. Then I will read in for the record a letter dated January 9, 2014 from the Town Planning and Zoning Commission recommending approval. Referral to DRAC was not necessary. A letter dated January 2, 2014 from Capital Regional Council of Governments finding no apparent conflict with regional plans and policies or the concerns of neighboring towns and if there's nothing further from my colleagues, we'll close the Public Hearing.

Public Hearing closed at 8:05 p.m.

Essie S. Labrot
Town Clerk/Council Clerk

ESL/dd